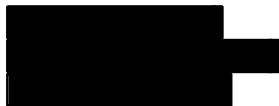




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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDD/146196

PRELIMINARY RECITALS

Pursuant to a petition filed November 27, 2012, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance (MA), a telephonic hearing was held on January 15, 2013, at Racine, Wisconsin.

The issue for determination is whether petitioner is disabled for MA purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. On or about May 12, 2012 petitioner applied for disability through the state MA program.
3. By letter dated November 14, 2012, the Disability Determination Bureau (DDB) found that petitioner was not disabled for **state** disability MA. Petitioner sought reconsideration on

November 27, 2012, but the DDB affirmed its determination on or about December 18, 2012. The file was then forwarded to the Division of Hearings and Appeals to schedule a hearing for petitioner. That hearing is the subject of this decision.

4. Prior to or concurrently with the state disability MA application, petitioner also applied for **federal** Supplemental Security Income (SSI – Title 16). That application was processed separately through the Social Security Administration.
5. The Social Security Administration determined petitioner was not eligible for SSI based upon findings of no disability on November 13, 2012.
6. The petitioner does not allege any new medical impairment other than the impairments considered in the social security decision.

DISCUSSION

To be eligible for **state** MA disability benefits, a person between the ages of 18 and 65 must be blind or totally and permanently disabled. A disability determination is based upon the conclusion that the individual is:

Unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

20 C.F.R. § 416.905

“Substantial, gainful activity” was defined in 2012 as earning \$1010 a month or more through some type of employment.

In addition, Wis. Stat. §49.47(4)(a)4, declares that a **state** finding of total and permanent disability for MA purposes must be in accordance with **federal SSI standards**. The federal regulations provide that a finding of no disability for SSI purposes, made within 12 months of an application for state MA, is binding on the state MA agency because the standards for federal and state disability are the same. 42 C.F.R. § 435.541(c).

SSI is a **federal** welfare program also operated by the Social Security Administration for poor people whom it determines are disabled. An individual need not have paid into the Social Security program to obtain these benefits, but there are asset and income limits.

As the standards for **state** MA disability and **federal** SSI benefits are the same, a finding of no disability for SSI purposes made within 12 months of the MA application is binding on a state MA agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions which have been presented to the Social Security Administration. Unfortunately for petitioner, none of those exceptions apply here. See 42 C.F.R. § 435.541(a); see also U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989). The information provided at hearing is not different from what was provided to the Social Security Administration.

Because petitioner has been denied SSI following a finding of no disability by the federal Social Security Administration within one year of the application for state MA disability, I must conclude I do not have jurisdiction to consider the merits of petitioner’s disability appeal. Therefore it must be determined petitioner is not eligible for state MA disability at this time.

Petitioner was unsure if he requested reconsideration of or appealed the federal decision separately to the Social Security Administration (SSA) for a hearing before a federal administrative law judge. Petitioner may want to take a copy of this decision to the SSA to see if he has, or if he can reopen his federal reconsideration and/or appeal. Should petitioner prevail at the federal level and is found disabled, he would qualify nonfinancially as disabled for state MA.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That petitioner is not disabled as that term is used for state disability MA purposes pursuant to Wis. Stat. §49.47(4).

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of February, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 8, 2013.

Racine County Department of Human Services
Disability Determination Bureau